IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY NINTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19764 of 2004

Between:

V. Brahmachary, S/o. Veeraiah, Business,
R/o. Sri Kanaka Durga Timber Saw Mill, H.INo. 14-845, Taka Road,
Miryalaguda, Nalgonda District.

..... PETITIONER

AND

Nagarjuna District Co-Operative Marketing Society Limited, Nalgonda, Rep. by its Chairman/Joint Collector, Nalgonda.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus: (i) declaring the action of the Respondent Society in notifying item No.4 of the Tender Notice No.811/2003 dated 11-10-2004 as arbitrary, illegal, violative of the articles 14, 21 and 300 A of the Constitution of India and set aside the notification to the extent of Item No.4 of the Tender Notification No.811/03, dated 11-10-2004.

Counsel for the Petitioner : MR. A.SUDERSHAN REDDY

Counsel for the Respondent: Mr. D.Govardhana Chary

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.19764 OF 2004

ORDER :

This writ petition is filed aggrieved by the action of the respondent Society in issuing the impugned notification dated 11-10-2004 calling for tenders in respect of sale of plot No.4 to an extent of 521 sq. yards.

The petitioner claims to be in possession of the said 521 sq. yards situated in Sy.No.869 of Miryalaguda Village and Town, Nalgonda District from the year 1992 having entered into a lease with the respondent Society. It is stated that the lease was executed on 20-11-1992 for a period of three years initially and the same was extended from time to time and that the petitioner still continues to be the tenant by paying monthly rent of Rs.1,300/-. It is also stated that in the year 2000, the respondent Society issued a tender notification inviting tenders for construction of six shops. In response to the same, the petitioner participated and submitted its bid for three shops which are located in the plot in his occupation. The petitioner quoted a sum of Rs.3 lakhs for three shops and paid a sum of Rs.1,90,000/- on 18-10-2000 as directed by the respondent Society. However, the respondent Society on some or other pretext has not constructed the shops and the possession was not handed over to the petitioner. Thereafter, the respondent Society issued the tender notification dated 12-01-2004 for four items including the plot to an extent of 521 sq. yards in his occupation. Since the petitioner is a tenant in respect of the said plot, on a representation made by him the respondent Society agreed to reserve the item No.4 of the notification to the petitioner and agreed to sell the same to the petitioner

at the rate of Rs.2,400/- per sq. yard. Accordingly, the respondent Society has also issued an errata deleting the item No.4 from the tender notification. The petitioner agreed to pay the sale consideration which comes to a total sum of Rs.12,60,820/- and also to pay any additional amount in the event of item No.3 being sold for any higher price. In spite of the fact that the petitioner has been representing to the respondent that he is ready and willing to pay the amounts and also for getting the registered sale deed executed and expressed his willingness to pay any additional amounts in the event of item No.3 fetching higher amounts, the respondent Society failed to comply with their obligation of transfer of shops in favour of the petitioner. On the other hand, the respondent Society while issuing a second notification on 11-10-2004 included item No.4 also which is in possession of the petitioner. The said action of the respondent Society is questioned in the writ petition contending that having reserved the said item No.4 for sale to the petitioner, the respondent is not justified in notifying the same for sale under the open auction-cum-tender.

The learned Counsel for the petitioner vehemently contends that since item No.4 was reserved for sale to the petitioner keeping in view the fact that he has deposited a sum of Rs.1,90,000/- long back in the year 2000 which is lying with the respondent Society and particularly in view of the failure on the part of the respondent to comply with their obligation to transfer the three shops in favour of the petitioner, the action of the respondent in including the plot No.4 for sale under the impugned tender notification is arbitrary and illegal.

At the outset, it is to be noted that though the petitioner is continuing in possession of Plot No.4, admittedly the period of lease in favour of the petitioner already expired. Nothing has been placed before this Court to show that the offer of the petitioner to purchase the Plot No.4 for Rs.12,60,820/- was accepted by the respondent and the same was reserved for sale to the petitioner. Even assuming that Rs.1,90,000/- is in deposit with the respondent, in the absence of any material to show that the respondent agreed to sell Plot No.4 to the petitioner, it cannot be held that the petitioner acquired any right to purchase the plot.

As a matter of fact, Sri D.Govardhanachari, who accepted notice for the respondent society, under instructions, states that the offer made by the petitioner to

purchase the plot in question for Rs.12,60,820/- was already considered and rejected by the respondent Society since the same was much less than the upset price fixed by the Revenue Divisional Officer.

In the circumstances, I do not find any merit in the contentions raised by the petitioner. On the basis of the material on record, no case is made out to show the existence of any legal right in favour of the petitioner which can be said to have been infringed by the impugned action of the respondent nor a case is made out to show that the auction proposed by the respondent is in breach of any statutory obligation. The action of the respondent to put the plot in question to public auction is undoubtedly in the interest of the society and the same cannot be held to be vitiated on account of arbitrariness nor there is any allegation of mala fides.

For the aforesaid reasons, the writ petition is misconceived and the same is accordingly dismissed. No cots.

It is made clear that this shall not preclude the petitioner to participate in the auction under the impugned notification if he so chooses.

29th October, 2004.

Gbs

To

1. The Chairman / Joint Collector, Nagarjuna District Co-Operative Marketing Society Limited, Nalgonda, Nalgonda.

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